

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

GARY C. JARAMILLO,

Plaintiff,

vs.

WILLIAM A. HALTER,  
Deputy Commissioner of Social Security

Defendant.

**FILED**  
UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

CIVIL NO. 98-0976 JC/RLP

MAR 19 2001

*R. Jaramillo*  
CLERK

**Memorandum Opinion and Order**

Plaintiff has moved for an award of attorneys fees in the amount of \$3,708.15 pursuant to 42 U.S.C. §406(b)(1), reflecting an hourly rate of \$207.74 for 17.85 hours of legal services rendered before this court. (Docket No. 18, 19). Plaintiff has previously been awarded fees in the amount of \$2,318.51 under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). (Docket No. 17).

Defendant raises no objection to either the hourly rate or hours expended. Defendant does state, however, that because Plaintiff has previously been awarded fees pursuant to the EAJA for services before this court, Plaintiff's attorney must refund the smaller amount to Plaintiff. Plaintiff apparently concurs, as his Motion states that Plaintiff, not his attorney, will receive the fees awarded under the EAJA, as well as the balance of his past due benefits. (Docket No. 18, ¶5).

Where fees are awarded under both 42 U.S.C. §406(b)(1) and 28 U.S.C. § 2412(d), the EAJA compensation is reimbursement to the claimant for fees paid out of the disability award, and the

---

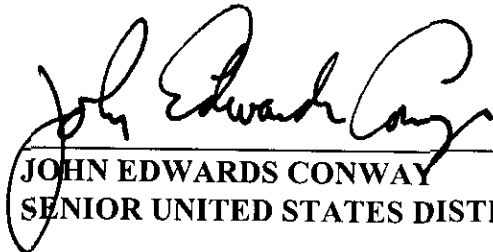
<sup>1</sup>William A. Halter was sworn in as Deputy Commissioner of Social Security on January 19, 2001. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, William A. Halter should be substituted for Commissioner Kenneth S. Apfel as Defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of §205(g) of the Social Security Act, 42 U.S.C. §405(g).

21

claimant's attorney must refund the amount of the smaller fee to the claimant. **Ott v. Apfel**, 7 F. Supp. 2d 1176, 1178 (D. Kan. 1998); **Hayes v. Callahan**, 973 F. Supp. 1290, 1291 (D. Kan 1997).

**IT IS THEREFORE ORDERED** that Plaintiff's Motion for an award of attorneys fees in the amount of \$3,748.00 pursuant to 42 U.S.C. §406(b)(1) is granted.

**IT IS FURTHER ORDERED** that because the amount awarded under the EAJA, 28 U.S.C. §2412(d), is less than the amount awarded under 42 U.S.C. §406(b)(1), the fee awarded pursuant to the EAJA in the amount of \$2,318.51 shall be refunded by Plaintiff's counsel to Plaintiff.



---

JOHN EDWARDS CONWAY  
SENIOR UNITED STATES DISTRICT JUDGE